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REMARKS

In the foregoing amendments, claims 27, 30, 32-34 and 45-49 were amended in a manner that is believed to better define applicant's invention. The editorial changes to the claims in these amendments were made to clarify what was already implied in applicant's claims and these amendments are not narrowing amendments and were not made for reasons substantially related to patentability presented. Claims 27-30, 32-40 and 42-49 remain in the application for consideration by the examiner.

Claims 27-30, 32-40 and 45 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claimed the subject matter which applicant regards as the invention. The Official action stated that the expression "monosaccharide is not essentially found" in claims 27 and 45 is not defined by the claims, the specification does not provide a standard for ascertaining the scope of this expression, and thus one of ordinary skill in the art would not be reasonably apprised of the scope of the claimed invention. The Official action explained that the term "not essentially found" does not exclude monosaccharides.

For reasons other than the aforesaid rejection under the second paragraph of 35 U.S.C. §112 and simply to better define applicant's invention, in the foregoing amendments the word "essentially" was deleted from the aforesaid expression in claims 27, so as to read "monosaccharide is not found." Claims 45 was amended to define a composition that is "free of monosaccharide." The expression "monosaccharides are not essentially found" was removed from claim 48; and claim 46, from which claim 48 depends, was amended to define a "black currant anthocyanin-containing *and monosaccharide-free* concentrated solution suitable for human consumption." Applicant respectfully submits that a person skilled in the art would

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attach a particular and definite meaning to the expression "monosaccharide is not found" in claim 27, the expression "free of monosaccharide" in claim 45, and the preamble in claim 48 describing "A black currant anthocyanin-containing *and monosaccharide-free* concentrated solution suitable for human consumption." Therefore, applicant respectfully submits that the claims pending in the present application comply with the second paragraph of 35 U.S.C. §112 and respectfully requests that the examiner reconsider and withdraw this rejection.

The Official action set forth a rejection of claims 27-30 and 32-40 under 35 U.S.C. §102(b) as anticipated by, or under 35 U.S.C. § 103(a) as being unpatenable over U.S. patent No. 4,643,902 of Lawhon *et al.* (Lawhon) in view of Nakhmedov<sup>1</sup> *et al.* (Koservanaya I Ovoshchesushil'naya Promyshlennost) and British patent specification number 1,007,751 (British '751). This rejection is set forth on pages 4-6 of the Official action. Applicant respectfully submits that the inventions defined in claims 27-30, 32-40 and 42-49 are patently distinguishable from the teachings of Lawhon, Nakhmedov and/or British '751 for the reasons set forth in the previously filed responses including that submitted on March 9, 2006, which reasons are incorporated herein by reference.

The Official action did not include any positive statement of a prior art rejection of claims 42-49. The Response to Arguments beginning on page 6 of the Official action appears to state that the rejection of claims 27-30 and 32-40 under 35 U.S.C. §102(b) as anticipated by, or under 35 U.S.C. § 103(a) as being unpatenable over Lawhon in view of Nakhmedov and British '751 extends to claims of 42-49. However, the Official action never explained why these claims

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<sup>1</sup> Please refer to the English translation of Nakhmedov that was attached to the response after final filed on April 23, 2004, in this application.

are unpatentable over these teachings. Accordingly, a formal allowance of claims 42-49 is respectfully requested.

As described above, the amended claim 27 defines "and monosaccharide is not found." According to Table 3 of Nakhmedov, the colors of Nakhmedov have total acidity of 9.85 and sugar content of 16.1%, which colors are a thick syrup-like liquid that is viscous and sour. Since the teachings of Nakhmedov propose a composition containing monosaccharides, the teachings of Nakhmedov cannot disclose or suggest the inventions defined in claims 27, 45 and 46 that do not contain monosaccharides (i.e., sugar).

Furthermore, it is respectfully noted that the compositions proposed by Nakhmedov are used as colors (i.e., coloring agents). Most significantly, the compositions proposed by Nakhmedov cannot be used as food. For this reason alone, applicant respectfully submits that the teachings of Nakhmedov cannot disclose or suggest the inventions defined in independent claims 27, 42 and 46 that are directed to "A black currant anthocyanin-containing *food composition suitable for human consumption*" and "A black currant anthocyanin-containing and monosaccharide-free *concentrated solution suitable for human consumption*." Accordingly, a formal allowance of claims 27, 42 and 46 and the claims which depend thereon is respectfully requested.

In addition, the teachings of Nakhmedov do not disclose or suggest a composition which comprises 5 to 25 % by weight of black currant anthocyanin as required in all of applicant's claims. The outstanding Official action stated that Nakhmedov teaches that wastes from black currant contained 5 to 10% solids, which is encompassed by the instantly claimed 5 to 25%. Applicant respectfully submits that this position is incorrect and should be reconsidered and withdrawn. The concentration, 5 to 10%, disclosed in Nakhmedov is the concentration of solids.

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In Table 1, Nakhmedov shows that anthocyanin content in marcs is 0.87 to 2.02%. Those persons skilled in the art understand that the 0.87 to 2.02% is anthocyanin content on the basis of solid matters, which amount is relative to, but patently distinguishable from, the anthocyanin content recited in present claims 27, 42 and 46. In contrast to the teachings of Nakhmedov, the compositions defined by claims 27, 42 and 46 contain 5 to 25% anthocyanin by weight of black currant anthocyanin on the basis of solid matters. Since the teachings of Nakhmedov do not teach a composition containing 5 to 25% of black currant anthocyanin, the teachings of Nakhmedov do not disclose or suggest the basic aspects of the presently claimed invention within the meaning of 35 U.S.C. §102 or 35 U.S.C. §103.

The prior art rejection of applicant's claims as being unpatentable included the combination of the teachings of Lawhon with Nakhmedov. The teachings of Nakhmedov were discussed and distinguished from applicant's claimed invention above. The teachings of Lawhon do not cure or rectify any of the aforesaid deficiencies in the teachings of Lawhon.

The Official action stated that Lawhon teaches that an ion exchange column is used to reduce the acid content so that the Brix reading to the grams of acid is not less than 21 to 1 or more than 26 to 1. In the presently claimed invention, the organic acids content can be reduced without using an ion exchange column. Example 1 of the present application shows that the use of the negatively charged reverse osmosis membrane itself accomplished the reduction of organic acids and deleted the monosaccharide. As shown in Example 2 of the present application, the ion exchange column was used to increase anthocyanin content not to reduce the organic acids content. These examples show the differences between the use of a negatively charged reverse osmosis membrane and an ion exchange column, especially with respect to the presently claimed invention, and that they cannot be interchangeably used so as to arrive at the

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compositions defined in the present claims. For such reasons, applicant respectfully submits that the comments concerning Lawhon that were proffered in the Official action are not pertinent to the question of obviousness of the presently claimed invention.

While the teachings of Lawhon may be concerned with a method of producing sterile and concentrated juices, the teachings of Nakhmedov at best only propose a method for collecting colors from a marc. The teachings of Nakhmedov are not concerned with and do not provide one of ordinary skill in the art with any motivation relative to a food composition suitable for human consumption, as required in the present claims. Due to the divergent nature of the teachings of Lawhon and those of Nakhmedov, those skilled in the art would have never been motivated to the presently claimed invention based on the combination of these teachings and the conclusion of obviousness that set forth in the outstanding Office action is based on unreasonable hindsight. It is well established in patent law that there must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination or modification. That knowledge cannot come from the applicant's invention itself. *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 678-79, 7 USPQ2d 1315, 1318 (Fed. Cir. 1988); *In re Geiger*, 815 F.2d 686, 687, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1147, 227 USPQ 543, 551 (Fed. Cir. 1985).

Along these lines, it is respectfully submit to that the teachings of Lawhon and Nakhmedov cannot be combined to overcome the respective deficiencies set forth therein. For example, the position of obviousness proposed in the outstanding Office action with respect to Nakhmedov is that it would be obvious to use black currant juice, as allegedly proposed therein, in the method proposed in Lawhon. However, even if one of ordinary skill in the art did this, the teachings of Lawhon cannot propose or suggest the amount of black currant, as presently

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claimed. This is because Lawhon teaches that the compositions therein have significantly smaller amounts of black currant than that required in the present claims.

Further, the Official action never explained why it would have been obvious for the composition proposed by Nakhmedov to have the amounts of organic acids as presently claimed. The Official action referred to the teachings of Lawhon as suggesting this aspect of the presently claimed invention, as discussed above. However, the process proposed by Lawhon cannot achieve the amounts of black currant as presently claimed. Therefore, the combination of Lawhon and Nakhmedov cannot suggest or motivate one of ordinary skill in the art to the presently claimed inventions that define amounts of black currant and organic acids, the combination of which is suggested by neither Lawhon nor Nakhmedov.

For such reasons, applicant respectfully submits that the prior art rejection of the claims pending in this application is fundamentally flawed. For example, the Official action admitted that Lawhon does not teach the presently claimed amounts of black currant at the bottom of page 4 of the Official action. This difference is sufficient for patently distinguishing applicant's claimed invention from the teachings of Lawhon. The Official action never explained where Nakhmedov teaches the amount of organic acid required in applicant's claims. This difference is enough to patently distinguish applicant's claimed invention from the teachings of Nakhmedov. Simply substituting black currant from the teachings of Lawhon into the teachings of Nakhmedov does not explain or suggest to one of ordinary skill in the art how or why a marc prepared by Nakhmedov could possibly contain the amounts of organic acid as presently claimed. Therefore, the presently claimed combination of amounts of black currant and organic acid cannot be obvious to one of ordinary skill in the art from the teachings of Lawhon and Nakhmedov.

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The teachings of British '751 were cited as teaching therapeutically useful compounds. However, these teachings do not contemplate or suggest amounts of black currant or organic acids as required in the present claims. Therefore, the teachings of British '751 cannot cure or rectify the aforesaid deficiencies in the teachings of Lawhon and Nakhmedov.

For at least the foregoing reasons and for the reasons set forth in the response filed on March 9, 2006, applicant respectfully submits that the present claims are patently distinguishable from the teachings of Lawhon, Nakhmedov, and/or British '751 within the meaning of 35 U.S.C. § 102 or 35 U.S.C. § 103. Therefore, applicant respectfully requests that the examiner reconsider and withdraw the rejection of all the pending claims in this application over these teachings.

For the foregoing reasons, applicant respectfully requests that the examiner reconsider and withdraw any and all the objections and rejections set forth in the Official action mailed June 1, 2006, so that pending claims 27-30, 32-40 and 42-49 will be allowed.

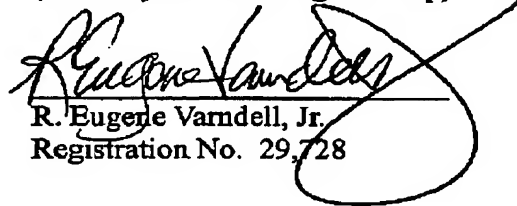
The present response is believed to be a complete and proper response to the Official action mailed June 1, 2006. While it is believed that the present application is in condition for allowance, should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues.

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In the event that this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The Commissioner is hereby authorized to charge the fee therefor, as well as any deficiency in the payment of the required fee(s) or credit any overpayment, to our deposit account No. 50-1147

Respectfully submitted,  
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